

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

NIKE, INC.,

Plaintiff,

v.

BY KIY, LLC,  
NICKWON ARVINGER, and  
DAVID WEEKS,

Defendants.

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BY KIY, LLC,

Counterclaimant,

v.

NIKE, INC.,

Counterclaim-Defendant.

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CASE NO. 1:23-cv-02431-VM

**DECLARATION OF JOHN DURRANT  
IN SUPPORT OF DEFENDANTS' EX  
PARTE MOTION FOR (I)  
PROTECTIVE ORDER REGARDING  
DEPOSITIONS NOTICED FOR JULY  
12-14, 2023; AND (II) MODIFICATION  
OF THE SCHEDULING ORDER**

**DECLARATION OF JOHN DURRANT**

I, John Durrant, declare as follows:

1. I am an attorney duly licensed to practice in the State of California and admitted to appear before this Honorable Court *pro hac vice*. I am the Founder and Chief Executive Officer of THE DURRANT LAW FIRM, APC, counsel for Defendant By Kiy, LLC (“By Kiy”) and Defendants Nickwon Arvinger (“Arvinger”), and David Weeks (“Weeks”, and collectively with By Kiy and Arvinger, “Defendants”). I submit this declaration in support of the Defendants’ Ex Parte Motion for (I) Protective Order Regarding Depositions Noticed for July 12-14, 2023; and (II) Modification of The Scheduling Order . Except as otherwise noted, I have personal knowledge of the facts set forth in this Declaration and, if called and sworn as a witness, I could and would testify competently thereto under oath.

2. There is good cause for this emergency ex parte Motion because Plaintiff Nike, Inc. (“Nike”) noticed depositions for July 12-14, 2023. Nike has not taken them off-calendar, despite Defendants repeated requests that they do so. I am unavailable for deposition this week because I have a major motion to prepare in another matter for a significant case in which I am sole counsel, and have other client commitments. I am the only lawyer representing Defendants, who has experience taking and defending depositions. Moreover, the current Scheduling Order and Case Management Plan (“Scheduling Order”) has upcoming deadlines that in my view need to be extended in order to allow discovery to proceed in a manner that is fair to all parties and consistent with other terms of the Scheduling Order, such as how depositions should proceed. I am frankly very surprised and disappointed that Nike left the depositions on calendar, requiring this emergency ex parte Motion.

3. Attached hereto as Exhibit A is a true and correct copy of the Notice of Deposition to Weeks.

4. Attached hereto as Exhibit B is a true and correct copy of the Notice of Deposition to Arvinger.

5. Attached hereto as Exhibit C is a true and correct copy of the Notice of Deposition to By Kiy.

6. Prior to noticing the depositions of Defendants on June 23, 2023, Nike did not mention to me or my co-counsel on this case Zakari Kurtz that it would be noticing depositions, did not clear dates with me or Mr. Kurtz. Nike never made any efforts to coordinate so that “depositions of all parties shall proceed during the same time” in accordance with the Scheduling Order. I live and work in Los Angeles.

7. Attached hereto as Exhibit D is a true and correct copy of a letter that I sent to counsel for Nike on June 23, 2023.

8. Attached hereto as Exhibit E is a true and correct copy of a letter that counsel for Nike sent to me on June 26, 2023.

9. Attached hereto as Exhibit F is a true and correct copy of a letter that I sent to counsel for Nike on June 27, 2023.

10. Attached hereto as Exhibit G is a true and correct copy of an email that counsel for Nike sent to me on June 29, 2023

11. Attached hereto as Exhibit H is a true and correct copy of a letter that I sent to counsel for Nike on July 5, 2023.

12. Attached hereto as Exhibit I is a true and correct copy of a letter that counsel for Nike sent to me on July 6, 2023

13. Attached hereto as Exhibit J is a true and correct copy of a letter that I sent to counsel for Nike on July 6, 2023.

14. Attached hereto as Exhibit K is a true and correct copy of a letter that counsel for Nike sent to me on July 7, 2023

15. Attached hereto as Exhibit L is a true and correct copy of a letter that I sent to counsel for Nike on July 7, 2023.

16. Attached hereto as Exhibit M is a true and correct copy of a second letter that counsel for Nike sent to me on July 7, 2023

17. Attached hereto as Exhibit N is a true and correct copy of a second letter that I sent to counsel for Nike on July 7, 2023.

18. Attached hereto as Exhibit O is a true and correct copy of a letter that I sent to counsel for Nike on July 8, 2023.

19. My co-counsel on this case Zakari Kurtz has reviewed each document produced by Nike. While Nike's production includes more pages of documents than that of Defendants, I am informed and understand from Mr. Kurtz that Nike's production appears to be mostly "padding" – including documents of little utility with a tenuous connection to Defendants' Requests for Production, such as pictures of Nike shoes, pictures of celebrities wearing Nike shoes, USPTO submissions that Nike should know Defendants already have, Nike advertisements, documents Nike has found online promoting Defendants products, cease and desist letters that Mr. Kurtz has already seen in his representation of other clients adverse to Nike, etc. While nearly all of By Kiy's Requests for Production would appear to require the review and production of emails, Nike only first produced any emails on July 7, 2023, and then only produced, by Mr. Kurtz's count, 16 emails, four of which were correspondence between current counsel for defendants and current counsel for plaintiffs.

20. The lack of a unified computer system or server and other aspects of By Kiy's thinly-staffed and relatively unsophisticated business have posed challenges to the gathering of documents, among other challenges, including a significant illness ultimately requiring hospitalization for Mr. Kurtz, who is primarily responsible for reviewing documents.

21. I am working diligently with Mr. Kurtz, within the resources available to locate, review, and produce documents for Defendants. Mr. Kurtz and I take our obligations to oversee discovery seriously.

Executed on July 9, 2023 at Los Angeles, California.

John S. Durrant  
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